



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 4, 1998

Mr. Kevin McCalla
Director
Legal Division
Texas Natural Resource
Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR98-0591

Dear Mr. McCalla:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 113633.

The Texas Natural Resource Conservation Commission (the "commission") received a request for information regarding Dow Chemical Company ("Dow"). You assert that the requested documents are excepted from required public disclosure based on section 552.101 of the Government Code in conjunction with section 382.041 of the Health and Safety Code, as well as section 552.110 of the Government Code.

Because the property and privacy rights of a third party may be implicated by the release of the requested information, this office notified Dow of its opportunity to assert that the information submitted to the commission is excepted from required public disclosure. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990). Dow responded to our notice by stating that it "waives any trade secret or confidential business information claims concerning (1) the feedstock chlorine concentration and (2) the HCl concentration of the resultant product(s) for the Halogen Acid Furnaces at Dow's Freeport, Texas site in records responsive to the . . . request."¹

Section 552.110 protects the property interests of private persons by excepting from disclosure two types of information: (1) trade secrets, and (2) commercial or financial

¹We note that Dow limits its waiver to "information contained in records submitted prior to [January 23, 1998] and [the waiver] is not applicable to any other information or request."

information obtained from a person and privileged or confidential by statute or judicial decision. In this instance, Dow has waived its proprietary interest in the requested information. See Open Records Decision Nos. 639 (1996) at 4 (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure), 552 (1990) at 5 (party must establish a prima facie case that information is trade secret).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 382.041 of the Health and Safety Code protects information submitted to the commission if a prima facie case is established that the information is 1) a trade secret, and 2) if the information was identified as confidential by the submitting party when it was submitted to the commission. Open Records Decision No. 652 (1997). The commission has shown that Dow identified certain records as confidential at the time it submitted them to the commission. However, neither the commission nor Dow has demonstrated that the information in these records constitutes a trade secret protected from disclosure by section 382.041 of the Health and Safety Code. Open Records Decision No. 652 (1997) at 4 (definition of trade secrets contained in Restatement of Torts and adopted by Texas Supreme Court for use in common-law trade secret actions is appropriate standard in determining if information is "relating to the secret processes or methods of manufacture or production" under section 382.041). Therefore, the commission may not withhold the information under section 552.110 of the Government Code or under section 382.041 of the Health and Safety Code in conjunction with section 552.101 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/ulg

Ref.: ID# 113633

Enclosures: Submitted documents

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